

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL A. DARGIS and DINA MCKNIGHT-
DARGIS,

UNPUBLISHED
September 16, 2008

Plaintiffs/Counter-Defendants-
Appellants/Cross-Appellees,

v

No. 273473
Allegan Circuit Court
LC No. 04-036484-CK

JACK BOSS and MARI BOSS,

Defendants/Cross-Defendants-
Cross-Appellants,

and

POLLY PROPERTIES, L.L.C.,

Defendant/Counter-Plaintiff/Cross-
Plaintiff/Cross-Defendant-
Appellee/Cross-Appellant/Cross-
Appellee,

and

EAGLE TRANSPORT, INC.,

Defendant/Cross-
Defendant/Counter-Plaintiff/Cross-
Plaintiff.

Before: Meter, P.J., and Hoekstra and Servitto, JJ.

PER CURIAM.

In this action to determine an interest in land, plaintiffs Michael A. Dargis and Dina McKnight-Dargis appeal as of right from the September 13, 2006, bench trial ruling that imposed

a constructive trust on the disputed parcel, with defendant Eagle Transport as beneficiary. Defendants Jack and Mari Boss appeal from the same judgment. We affirm.¹

Jack Boss and Michael Dargis were the sole shareholders and owners of Eagle Transport, a Michigan trucking corporation. In 1998, Eagle Transport entered into a commercial lease for its trucking facility with Polly Properties in Holland, Michigan. Almost immediately, Eagle Transport needed to expand its facility. Eagle Transport and Polly Properties reached an agreement with respect to the expansion, as part of which additional building space and other improvements were to be built. The construction costs for the improvements were added into the existing commercial lease between Eagle Transport and Polly Properties. Jack and Michael, along with their respective spouses, Mari and Dina,² entered into a land contract to purchase the approximately seven acres of land (the disputed parcel) adjacent to the leased parcel, owned by Polly Properties and on which some of the building was to occur. Some of the improvements, i.e., parking, driveway use, and floodplain shelving, extended from the leased premises onto the disputed parcel.

In March 2001, Jack bought Michael's interest in Eagle Transport, and Dina's employment with Eagle Transport ended at that time. After Michael and Dina started another trucking business, Eagle Transport sued Michael for violating a noncompete agreement. In October 2003, Michael and Dina settled that action with Eagle Transport.

Meanwhile, a third party purchased 80 percent of Jack's interest in Eagle Transport in March 2003. On February 28, 2004, Eagle Transport terminated Jack's employment. Jack subsequently requested a deed from Polly Properties for the disputed parcel, asking for the deed to be put in his and Mari's names. However, Polly Properties would not deliver the deed, because there were four buyers listed on the land contract.

The Dargises thereafter filed a complaint against the Bosses, Polly Properties, and Eagle Transport to determine their interest in the disputed parcel, requesting that the trial court enter an order in their favor to establish their interest in the disputed parcel, and to appoint a receiver to sell the disputed parcel and distribute the proceeds. Polly Properties filed a counterclaim against the Dargises and cross-claims against the Bosses and Eagle Transport, requesting that the trial court declare that any conveyance of the disputed parcel would be subject to easements, restrictions, licenses, and encroachments imposed on the disputed parcel. Eagle Transport filed a

¹ Because we affirm the trial court's ruling with respect to the imposition of the constructive trust, we need not address defendant Polly Properties' cross-appeal of that judgment, which denied parking and driveway easement rights on an implied-easement theory. Following the bench trial, the trial court approved a stipulated agreement between Polly Properties and Eagle Transport, whereby Eagle Transport agreed to convey the disputed parcel to Polly Properties. The question raised by Polly Properties on cross-appeal is moot, because Polly Properties now owns both parcels. See *BP7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998) ("[a] case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights").

² Mari and Dina also held positions in Eagle Transport.

counterclaim against the Dargises, and cross-claims against the Bosses and Polly Properties, arguing that it was entitled to an equitable mortgage on the disputed parcel, because it made all of the payments under the land contract.

The trial court found that Eagle Transport had an equitable interest in the disputed parcel based on its making the following payments: “(1) the land contract down payment, (2) the land contract payments from February 1999 through January 2003, (3) the property taxes on the disputed parcel from 1999 through 2002, [and] (4) the insurance on the property from 1999 through 2004.” Additionally, the trial court found that the disputed parcel was listed on Eagle Transport’s financial statements and that, while Michael and Jack argued that Eagle Transport made the payments as compensation to them as shareholders, neither paid any taxes on the amount Eagle Transport paid on the land contract. The trial court found that Polly Properties held an easement for floodplain shelving, but it ruled that Polly Properties did not hold easements for parking or driveway use over the disputed parcel.

On appeal, the Dargises and the Bosses argue that the trial court erred by granting Eagle Transport constructive-trust relief for unjust enrichment. We disagree.

We review for clear error a trial court’s factual findings and review de novo its conclusions of law following a bench trial. *Ligon v Detroit*, 276 Mich App 120, 124; 739 NW2d 900 (2007). A finding of fact is clearly erroneous if this Court is left with a definite and firm conviction that a mistake has been made. *Carrier Creek Drain Drainage Dist v Land One, LLC*, 269 Mich App 324, 329-330; 712 NW2d 168 (2005). “Whether a specific party has been unjustly enriched is generally a question of fact. . . . However, whether a claim for unjust enrichment can be maintained is a question of law, which we review de novo.” *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006). Issues of contract interpretation also present questions of law subject to de novo review. *46th Circuit Trial Court v Crawford Co*, 476 Mich 131, 140; 719 NW2d 553 (2006), amended 476 Mich 1201 (2006).

This Court recently defined unjust enrichment as occurring when there is (1) the receipt of a benefit by one party from another party and (2) an inequity resulting to the party conferring the benefit, because of the retention of the benefit by the recipient. *Sweet Air Investment, Inc v Kenney*, 275 Mich App 492, 504; 739 NW2d 656 (2007). “A trial court may impose a constructive trust when necessary to do equity or avoid unjust enrichment.” *Morris Pumps, supra* at 202. However, the law will imply a contract only if one party has been unjustly or inequitably enriched at the other party’s expense. *Id.* at 195. “A constructive trust may be based upon a breach of fiduciary or confidential relationship, misrepresentation, concealment, mistake, undue influence, duress or fraud.” *Grasman v Jelsema*, 70 Mich App 745, 752; 246 NW2d 322 (1976).

In the instant case, the Dargises and the Bosses agreed to purchase approximately seven acres of land lying south of the leased property from Polly Properties on January 1, 1999. It is undisputed that Eagle Transport made all of the payments under the land contract, as well as payments for property taxes and insurance. Eagle Transport issued checks for the land contract’s down payment, as well as monthly payments from February 1999 to December 1999, and from March 2001 to January 2003. Eagle Transport paid the taxes on the property from 1999 to 2003 and paid for the insurance on the property from 1999 to 2004. Michael and Jack did not make any payments, and did not reimburse Eagle Transport, for the land contract’s monthly payments,

the property's taxes, or the property's insurance. Also, there was no evidence that Eagle Transport was renting the disputed parcel from the Dargises and the Bosses. Moreover, Michael and Jack did not treat the payments on the land contract by Eagle Transport as income.

A corporate director or officer shall discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner reasonably believed to be in the best interests of the corporation. MCL 450.1541a(1)(a), (b), and (c). Directors and officers of a corporation occupy a fiduciary relationship toward the corporation, and courts of equity treat such individuals as trustees. *L A Young Spring & Wire Corp v Falls*, 307 Mich 69, 101; 11 NW2d 329 (1943). Such individuals must act with good faith in dealings with the corporation, and they must manage the affairs of the corporation solely in the interest of the corporation. *Id.*

Contrary to the Bosses' contention, a corporation can successfully sustain an unjust enrichment claim against its directors or officers. See *id.* at 104-105. In the instant case, it is undisputed that Eagle Transport is a Michigan corporation, and that Michael and Jack owned Eagle Transport. The record provides that the Dargises and the Bosses were the buyers on the land contract; however, Eagle Transport made all of the payments, and the disputed parcel was to be used to expand Eagle Transport's operation. Moreover, Polly Properties understood that Michael and Jack would subsequently convey the property to Eagle Transport. The Dargises and the Bosses obtained the disputed parcel to expand Eagle Transport's facility; however, the Dargises and the Bosses, individually, claimed to have purchased the disputed parcel as individuals, rather than on behalf of Eagle Transport. Nevertheless, Eagle transport made all of the payments associated with this transaction. Directors and officers of corporations shall not "acquir[e] for themselves the property which it is their duty to acquire for the corporation and which is necessary for its purposes." *Id.* at 101 (internal citations and quotation marks omitted).

Further, the Dargises' assertions that they would not be unjustly enriched by obtaining the property are entirely self-serving. Both elements of unjust enrichment have been satisfied: Eagle Transport conferred a benefit on the Dargises and the Bosses by making all of the payments under the land contract, as well as paying property taxes and insurance, and an inequity would result if the Dargises and the Bosses obtained title to the disputed parcel, without their having made any payments under the land contract, paying the property taxes or insurance, reimbursing Eagle Transport for its payments, or reporting the payments as alleged corporate compensation. On this record, we conclude that the imposition of a constructive trust to avoid unjust enrichment was appropriate, where Michael and Jack breached their fiduciary duty. See *Grasman, supra* at 752 (a constructive trust may be based upon a breach of a fiduciary relationship, among other things).³

³ We reject the contention that Eagle Transport's payments with respect to the property should be considered merely a form of consideration for its limited use of the property during the time the payments were being made.

In reaching our conclusion, we reject the Dargises' argument that Eagle Transport's claim is barred by a mutual release in a previous agreement. In an agreement between the Dargises, their new company, and Eagle Transport, each party agreed to release the other

from any liability, claim, right, debt, obligation, damage or cause of action, whether known or unknown, fixed, vested or contingent, joint, joint and several, or individual, arising from or in any way related to facts in existence as of the date hereof.

The release further provided that "[i]t is the express intent of the parties to release and extinguish any and every claim or dispute that may exist between them as of the date of this Agreement." We find that, regardless of the applicability of the mutual release, the trial court was called upon to determine title of the disputed parcel. Numerous pleadings in the form of claims, counterclaims, and cross-claims, involving several parties, not only the Dargises and Eagle Transport, were before the trial court. A trial court may use its equitable powers to grant relief according to the nature of the case and may "do what is necessary to accord complete equity and to conclude the controversy." *Cohen v Cohen*, 125 Mich App 206, 211; 335 NW2d 661 (1983) (internal citation and quotation marks omitted). In this case, the rights of Eagle Transport and the Dargises needed to be considered to conclude the controversy surrounding title to the disputed parcel.

Affirmed.

/s/ Patrick M. Meter
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto